

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

WALTER CRATE

Plaintiff,

V.

FALCONHEAD CAPITAL, LLC,

Defendant.

Case No. 08 CV 6063 (AKH)(KNF)

FALCONHEAD CAPITAL, LLC

Counterclaim Plaintiff,

V.

WALTER CRATE,

Counterclaim Defendant.

**PLAINTIFF WALTER CRATE'S**  
**ANSWER TO DEFENDANT**  
**FALCONHEAD CAPITAL, LLC'S**  
**COUNTERCLAIM AND AFFIRMATIVE**  
**DEFENSES**

Now comes Plaintiff, Walter C. Crate, by and through counsel, and for his Answer and Affirmative Defenses to the Counterclaim filed by Defendant Falconhead Capital, LLC (“Falconhead”), states and avers as follows:

## PARTIES

1. Plaintiff admits the allegations contained in paragraph 1 of Falconhead's Counterclaim.

2. Plaintiff admits the allegations contained in paragraph 2 of Falconhead's Counterclaim.

### **JURISDICTION AND VENUE**

3. Plaintiff admits that the Court has jurisdiction over Falconhead's Counterclaim pursuant to 28 U.S.C. § 1332, that the matters raised in the Counterclaim form part of the same case or controversy as the claims raised by Plaintiff in his Complaint, and that the claims in the Complaint exceed \$75,000.00. Plaintiff denies any remaining allegations contained in paragraph 3 of Falconhead's Counterclaim.

4. Plaintiff admits the allegations contained in paragraph 4 of Falconhead's Counterclaim.

### **STATEMENT OF FACTS**

5. Plaintiff denies the allegations contained in paragraph 5 of Falconhead's Counterclaim.

6. Plaintiff denies the allegations as contained in paragraph 6 of Falconhead's Counterclaim.

7. Plaintiff admits that Defendant Falconhead entered into an agreement with Plaintiff, a copy of which is attached as Exhibit A to the Complaint. Plaintiff denies the remaining allegations as contained in paragraph 7 of Falconhead's Counterclaim.

8. Plaintiff denies the allegations as contained in paragraph 8 of Falconhead's Counterclaim.

9. Plaintiff admits Defendant Falconhead acquired Elite Racing, Inc. Plaintiff is without knowledge sufficient to admit or deny whether Daniels & Associates L.P. approached Falconhead in early 2007, whether Daniels & Associates L.P. was authorized to find a buyer for Elite Racing, Inc., or whether Daniels & Associates L.P. was able to broker a transaction

between Mr. Murphy of Elite Racing, Inc. and Defendant Falconhead. Plaintiff denies all remaining allegations contained in paragraph 9 of Falconhead's Counterclaim.

**FIRST COUNTERCLAIM  
(Fraud)**

10. Plaintiff incorporates by reference each preceding paragraph as if fully rewritten herein.

11. Plaintiff denies the allegations contained in paragraph 11 of Falconhead's Counterclaim.

12. Plaintiff denies the allegations as contained in paragraph 12 of Falconhead's Counterclaim.

13. Plaintiff denies the allegations as contained in paragraph 13 of Falconhead's Counterclaim.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff requests the Court deny Falconhead the judgment sought in subparagraphs (a) through (d) in the Prayer For Relief contained in Falconhead's Counterclaim and enter judgment for Plaintiff on the single Count of Fraud contained in the Counterclaim, costs and fees, and any additional relief this Court deems equitable.

**AFFIRMATIVE DEFENSES**

1. Falconhead's Counterclaim fails to state a claim against Plaintiff upon which relief can be granted.

2. Falconhead's Counterclaim fails to meet the requirements of Federal Civil Rule 9(b).

3. The claim asserted in Falconhead's Counterclaim is barred by Falconhead's breach of contract.

4. The claim asserted in Falconhead's Counterclaim is barred by the doctrine of unclean hands.

5. The claim asserted in Falconhead's Counterclaim is barred by the doctrine of laches.

6. Falconhead is not entitled to punitive damages.

7. Plaintiff reserves the right to assert additional Affirmative Defenses that become available through the course of discovery.

Dated: August 25, 2008  
City, State: Garden City, New York

Respectfully submitted,

s/Peter F. Tamigi  
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*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

The foregoing *Plaintiff Walter Crate's Answer To Defendant Falconhead Capital, LLC's Counterclaim And Affirmative Defenses* was filed electronically with the Court on this 25<sup>th</sup> day of August, 2008. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

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